

users. The FCC must structure any auctions to ensure that PLMR users have a fair opportunity to obtain spectrum to provide critical internal functions.

#### **D. Significant Concern Was Expressed Over User Fee Proposal**

The Commission's proposal to implement user fees in the event that statutory authority for such fees is eventually granted was opposed by the vast majority of commenters. While UTC does not oppose the general concept of user fees, UTC does share some of the concerns that were raised by commenters in response to this proposal.

UTC noted in its comments that the FCC must carefully evaluate the basis for user fee amounts and urged the FCC not to use the commercial license auctions as the basis for these fees. A large number of commenters agree.<sup>59</sup> The Sprint LECs oppose setting any user fees on the commercial auctions for narrowband PCS or IVDS because, unlike these services, the PLMR services are not subscription-based nor do they obtain revenue directly from the use of the spectrum.<sup>60</sup> Ericsson adds that user fees should not be designed to approximate the funds generated by the narrowband PCS auctions because PLMR licenses cannot afford to spend similar amounts.<sup>61</sup> AICC notes that IVDS and PCS license values were based on the availability of large blocks of contiguous, exclusive-use spectrum, and would not serve as an appropriate basis for PLMR user fees.<sup>62</sup>

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<sup>59</sup> PacifiCorp, pp. 3-4; Ericsson, p. 3; AASHTO, p. 3; The Sprint LECs, p. 6; ITLA, p. 11; ATA, pp. 9-10; AICC, p. 7; FIT, p. 13.

<sup>60</sup> The Sprint LECs, p. 6.

<sup>61</sup> Ericsson, p. 3.

<sup>62</sup> AICC, p. 7.

UTC agrees with LMCC and other parties, such as Union Pacific, in noting that proposed application of user fees on Part 90 licensees is unfair in that it singles out Part 90 licensees.<sup>63</sup> Singling out internal-use systems, such as those operating in the Part 90 bands, for an economic efficiency incentive while existing users in commercial bands are not subject to any sort of incentive is patently unfair. ATA notes that broadcasters pay nothing for their spectrum even though they derive substantial benefits from it; if user fees are adopted, there can be no such "islands of privilege."<sup>64</sup>

UTC also questions whether the imposition of user fees (or other market-based mechanisms) will truly provide an incentive for efficiency. LMCC indicates its strong belief that user fees will not provide an incentive for spectrum efficiency because unresolved coordination issues may frustrate the introduction of more efficient systems.<sup>65</sup> In LMCC's view, until these technical issues are resolved, incentives such as user fees will not be effective. UTC shares LMCC's concerns regarding the efficacy of user fees without a resolution of the overriding technical and coordination issues. Furthermore, as numerous parties note, the existing congestion in the PLMR bands will provide a strong incentive for efficiency and will eliminate any perceived need for user fees. The high maintenance costs and declining prices for new equipment, when combined with the need for additional channels, will bring about change-outs to new, more efficient systems without the proposed incentives.<sup>66</sup>

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<sup>63</sup> LMCC, p. 17; Union Pacific, pp. 13-14.

<sup>64</sup> ATA, pp. 10-11.

<sup>65</sup> LMCC, p. 7 and p. 17.

<sup>66</sup> AICC, p. 4.

Although UTC does not object to the imposition of a reasonable user fee for spectrum usage, it shares the concerns expressed by emergency and public service entities regarding the effect that this fee could have on entities that have a limited ability to raise capital. AASHTO notes that the imposition of user fees would act as a tax on state and local government entities and that these fees would take money from these entities at a time when revenues are low and money is needed to purchase more efficient equipment.<sup>67</sup> APCO also opposes the imposition of a fee on public safety entities and notes especially the impropriety of such a charge on state and local entities. The NYCTA adds that imposing user fees on public safety users would not increase spectrum efficiency, but rather, merely divert funds that could otherwise be used to promptly implement spectrally efficient systems.<sup>68</sup>

In its comments, UTC strongly agreed and urged that services which meet vital public needs, such as those generally found in the proposed Emergency Response and Public Services Pools, be exempted from user fees or required to pay only reduced fees which take into account the vital public service provided by these licensees.<sup>69</sup> This view is shared by other commenters, including PacifiCorp, Union Pacific Railroad, NYCTA and AAR.<sup>70</sup> Hewlett-Packard supports an exemption for these services, urging the FCC to

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<sup>67</sup> AASHTO, p. 3.

<sup>68</sup> NYCTA, pp. 2-3.

<sup>69</sup> UTC, p. 26.

<sup>70</sup> PacifiCorp, pp. 3-4; Union Pacific, p. 13; NYCTA, p. 2; AAR, p. 38.

look to the exemption from spectrum auctions in the pending telecommunications legislation for guidance in imposing user fees.<sup>71</sup>

#### **E. Preferred Marketplace Incentive**

As discussed above, the overwhelming majority of commenters reject financial forces such as auctions and user fees as an inappropriate means of effecting technical changes for the users in the private land mobile community. UTC therefore renews its recommendation that the Commission encourage the transition to narrowband or more efficient technology through a program whereby inefficient systems are relegated to secondary status on a date certain.

Specifically, UTC continues to support an overlay of the FCC's type acceptance deadlines for narrowband equipment and the previously-filed Industry Consensus plan (as modified to reflect a 20-year plan), which would require existing licensees in "urban areas" to meet the 12.5 kHz efficiency standard no later than 10-years after adoption of the final rules in the refarming docket (*i.e.*, 2005) and would require all licensees (urban and rural) to meet the 6.25 kHz efficiency standard within 20 years (*i.e.*, by 2015). As UTC has noted, the distinction between urban and rural areas is necessary to recognize that in many areas of the country there is no spectrum congestion and it is unnecessary to require a shift to narrowband technologies by a date certain. The type acceptance requirements will ensure that the rural areas convert to narrowband technology as part of the natural equipment purchase/replacement process. Under this plan "urban areas"

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<sup>71</sup> Hewlett-Packard, p. 7.

would be defined as anywhere within 100 miles of the top 60 urban areas listed in Sec.90.741.<sup>72</sup> Licensees of “new” systems (*i.e.*, systems not functionally integrated with an existing system) would have to meet the then-current efficiency standard.


UTC is convinced that the combination of the type acceptance requirements and a mandatory change in licensing status will facilitate a smooth transition to more efficient technologies while at the same time ensuring all licensees with continued access to spectrum to meet their private internal communications requirement.

**WHEREFORE, THE PREMISES CONSIDERED,** UTC requests the Federal Communications Commission to take action in accordance with the views expressed in these reply comments.

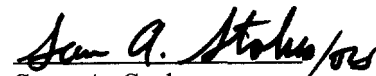
Respectfully submitted,

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<sup>72</sup> 47 C.F.R Section 90.741. UTC would recommend that other areas of the country could become classified as “urban” upon a petition by an interested party (e.g., a frequency coordinator) that an area has become congested.